



MISSOURI DEPARTMENT OF MENTAL HEALTH

Keith Schaffer
KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
7.350

CHAPTER Community Placement and Licensing	SUBCHAPTER Placement Appeal Procedures	EFFECTIVE DATE 6-17-14	NUMBER OF PAGES 4	PAGE NUMBER 1 of 4
SUBJECT Petition and Appeal Process When a Resident Refuses to Consent to Placement or Discharge		AUTHORITY Section 630.050, RSMo	HISTORY See Below	
PERSON RESPONSIBLE Director, MRDD			SUNSET DATE 7-1-17	

PURPOSE: Prescribes the petition and appeal process if a resident, minor resident's parent or a resident's legal guardian refuses to consent to the proposed placement or discharge of a resident from a developmental disability facility.

APPLICATION: Applies to developmental disability facilities operated by the department.

(1) As used in this DOR, the following terms mean:

(A) Independent Review Panel: A three (3) person review panel appointed by the Chairperson of the State Advisory Council on Developmental Disabilities.

(B) Developmental Disability Facility: A private or department facility that admits persons who are mentally retarded or developmentally disabled for residential habilitation or other services that is licensed, certified or funded by the department pursuant to chapter 630, RSMo.

(2) If a resident, minor resident's parent or a resident's legal guardian refuses to consent to placement or discharge as described in section 633.135, RSMo, then the head of the developmental disability facility shall request the resident, parent or guardian to explain to the facility in writing the reasons for the refusal on the Refusal to Consent form.

(3) If consent is not obtained, with or without specified reasons, the head of the developmental disability facility shall personally review the resident's file and reasons for the refusal, if given. The head of the facility may also consult with the same or another interdisciplinary team or other staff members regarding the appropriateness of the referral for placement.

(A) The head of the facility shall, within ten (10) working days of receipt of the Refusal to Consent form, either withdraw the referral for placement or discharge or request that the director of the division of developmental disabilities review the resident's file to determine whether the proposed placement or discharge is appropriate under the criteria set out in section (8) of this DOR.

(B) If the head of the facility petitions the division director, the head of the facility shall complete pertinent portions of the Appeal Flow Sheet and shall send the form with the request for review petition and a copy of the Refusal to Consent form to the division director.

(4) After personal review of the Refusal to Consent form and all other necessary documentation, the division director shall, within ten (10) working days of receipt of the request for review petition, determine whether the proposed placement or discharge is appropriate under the criteria set out in section (8) of this DOR. The division director shall dispose of the petition as follows:



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(A) The division director shall either withdraw the referral or refer the petition and documentation to the chairperson of the State Advisory Council on Developmental Disabilities ("Advisory Council") for review and recommendations by the Independent Review Panel.

(B) If the petition is referred, the division director shall complete pertinent portions of the Appeal Flow Sheet and send it with the referral.

(C) If the petition is referred, the division director shall mail a notice of the institution of the appeal, a copy of the petition, and a copy of the documentation supporting the petition to the resident, minor resident's parent or resident's legal guardian.

(5) After the chairperson of the Advisory Council has received the referral, the chairperson shall appoint and convene an Independent Review Panel to conduct a hearing and recommend findings of fact, conclusions of law, and decision to the director of the department under the criteria set out in section (8) of this DOR. Hearings shall be scheduled to be held within forty-five (45) calendar days of receipt of the referral from the division director, but may be delayed for good cause.

(A) The chairperson of the Advisory Council shall appoint three (3) persons to the review panel. At least one (1) member of the panel shall be a parent or guardian of a resident who resides in a department developmental disability facility. The remaining members of the panel shall be persons:

1. who are from non-governmental organizations or groups concerned with prevention of developmental disability and evaluation, care and habilitation of mentally retarded persons; and

2. who are familiar with services and service needs of residents in developmental disability facilities operated, licensed or funded by the department.

(B) No member of the panel shall be an officer or employee of the department. The chairperson of the Advisory Council shall complete pertinent portions of the Appeal Flow Sheet to indicate the appointment.

(C) The department's Hearings Administrator shall serve as the legal advisor to the review panel.

(D) Hearings before the review panel shall be closed proceedings.

(6) The notice and procedure requirements for the hearing by the panel shall be in accordance with Chapter 536, RSMo, including the following:

(A) The Hearings Administrator or designee shall assign a caption and number to the case.

(B) The Hearings Administrator or designee shall set the time and place for the hearing by coordinating this with the members of the review panel.

(C) The Hearings Administrator or designee shall mail a notice of hearing to the head of the facility and the resident, minor resident's parent or resident's legal guardian by certified mail, return receipt requested. The notice shall contain the date, time and place of the hearing and shall be mailed at least fifteen (15) calendar days before the date of the hearing. If an attorney has entered an appearance on behalf of the resident, minor resident's parent or resident's legal



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guardian, the division director, the Hearings Administrator or designee shall send a copy of the notice to the attorney.

(D) The head of the facility shall have the burden to demonstrate by a preponderance of evidence that the proposed placement or discharge is appropriate under criteria set out in section (8) of this DOR.

(E) The Hearings Administrator shall arrange to have the hearing electronically recorded for purposes of obtaining a transcript.

(7) The review panel shall forward the tape recording, recommended findings of fact, conclusions of law and decision to the department director for review and consideration within twenty (20) working days of the conclusion of the hearing. The department director shall, within ten (10) working days of receipt of the review panel's recommendations, issue findings of fact, conclusions of law and decision ("Decision"). A copy of the Decision shall be sent to the head of the facility and the resident, minor resident's parent or resident's legal guardian by certified mail, return receipt requested.

(8) The criteria for determining whether the proposed placement is appropriate are as follows:

(A) As set out in section 630.610, RSMo, a comprehensive evaluation and individualized habilitation plan must indicate the following:

1. the resident is developmentally disabled, and
2. the resident needs special care, treatment or habilitation services including room or board, or both.

(B) As set out in section 630.615, RSMo, the proposed placement meets the following criteria:

1. it is in the best interest of the resident;
2. it is the least restrictive environment for providing care and treatment consistent with the needs and conditions of the resident;
3. the individual degree and treatment which is required for the resident is of comparable quality to the existing care and treatment provided in the developmental disability facility based upon the department's investigation of the alternative placement and its program of care and treatment;
4. it would maintain relationships of the resident to family, guardian or friends and encourage their beneficial visits to the resident.

(C) As set out in section 630.620, RSMo, the facility has consulted with the resident, minor resident's parent, or resident's legal guardian and the proposed placement facility is one of the following:

1. A facility licensed by the Department of Social Services under Chapter 198, RSMo, and licensed or certified, or both by the department;
2. A facility licensed or certified, or both, by the department, or
3. The home of the resident.

(9) The resident shall not be placed or discharged from the developmental disability facility until the Decision becomes final pursuant to Chapter 536, RSMo. As set out in Chapter 536 and section 633.135.4, RSMo, the resident, minor resident's parent, or legal guardian may appeal the Decision of the director.



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(10) If the Decision determines that the resident should be placed, the resident shall be moved to the placement as set forth in the Decision. If the resident, minor resident's parent or resident's legal guardian does not consent to the placement once the Decision is final, the developmental disability facility shall discharge the resident and the regional office shall offer support services.

(11) If the director or court determines that the proposed placement or discharge is not appropriate under section 633.135, RSMo, the resident shall remain in the developmental disability facility until a change occurs in the resident's condition or the availability of appropriate placement facilities becomes available, at which time the developmental disability facility may initiate a new placement referral.

(12) The department shall not retaliate against any state employee as a result of the appeal of a good faith decision to place the resident including an employee who testifies during the hearing or otherwise provides information or evidence in regard to a proposed placement.

History: Original DOR Effective October 15, 1981. Amendment effective July 1, 1996. Amendment effective July 1, 2002. On July 1, 2003 the sunset date was extended to July 1, 2004. On July 1, 2004 the sunset date was extended to July 1, 2005. On July 1, 2005 the sunset date was extended to July 1, 2006. On July 1, 2006 the sunset date was extended to July 1, 2009. Amendment effective June 1, 2008. Amendment effective May 20, 2011. On May 20, 2011 the sunset date was extended to July 1, 2014. On June 17, 2014 the sunset date was extended to July 1, 2017.

**DEPARTMENT OF MENTAL HEALTH
DIVISION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

(Facility Director)

(Name of mental retardation facility)

(Name of resident)

(Parent or Guardian if resident is a minor
or legally incompetent)

(Proposed placement or discharge)

(Date Refusal to Consent form received)

APPEAL FLOW SHEET

I. PETITION TO DIVISION DIRECTOR

Check items completed:

_____ Request for review petition completed and signed by head of facility is attached.
_____ Person Centered Plan is attached.
_____ Functional Assessment and supporting documentation is attached.
_____ Refusal to Consent Form is attached.
_____ Transition Plan is attached.

Date

Signature of head of facility

II. DISPOSITION OF PETITION BY DIVISION DIRECTOR

_____ (Date request for review petition received)

Please check one of the following. After my review, I find:

_____ Placement to be appropriate and refer the following to the Chairperson of the Missouri Advisory Council on Mental Retardation and Developmental Disabilities:

- a) The request for review petition;
- b) Documentation, including Person Centered Plan, Functional Assessment and Transition Plan;
- c) Refusal to Consent Form; and
- d) This flow sheet to the Chairperson of the Missouri Advisory Council on Mental Retardation and Developmental Disabilities for recommended decision.

*Note: The Division Director shall send the resident, minor resident's parent, or minor's guardian a copy of the petition and the documentation supporting it.

_____ I determine that placement in the proposed residential facilities is not appropriate, therefore, I return the petition and documentation to the facility along with this Appeal Flow Sheet.

Date

Signature of Division Director

III. APPOINTING AND CONVENING THE REVIEW PANEL

Under Section 633.135, RSMo, I appoint the following persons who have agreed to serve as the review panel to conduct a hearing and recommend findings of fact, conclusion of law, and decision to the Department Director:

Name

Name

Name

Date

Signature of Chairperson of Missouri Advisory Council on
Mental Retardation and Developmental Disabilities

IV. RECOMMENDATIONS OF REVIEW PANEL

Recommended findings of facts, conclusions of law, decision and tape recording of the hearing were forwarded to the Director of the Department of Mental Health on this date _____.

Signature of Department Hearings Administrator

V. NOTICE OF DECISION

I have notified the resident, minor resident's parent, or resident's guardian and the head of the above mental retardation facility of my findings of fact, conclusions of law, and decision on this date _____.

Signature of Department Director

VI. COURT REVIEW

Court review was initiated on this date _____; or

Court review was not initiated within thirty (30) days of the notice within to the parties from the Department Director; thus, the appeal decision is final.

Date

Signature of Division Director or Designee